

Ms. Connie Tzioumis
Office of Investment Policy
Overseas Private Investment Corporation
1100 New York Avenue, N.W.
Washington, DC 20527

RE: Comments on the OPIC Draft Labor and Human Rights Policy Statement

Dear Ms. Tzioumis,

Please find below our comments on OPIC’s Draft Labor and Human Rights Policy Statement. Specialized Technology Resources, Inc. – Responsible Sourcing, based in Los Angeles, California, has almost 20 years of experience monitoring labor rights in over 140 countries on behalf of Fortune 500 companies and financial institutions. As such, we hope our feedback will serve to reflect good practices in the private sector that we have observed, shaped, and supported over the years.

We commend OPIC for formalizing a Labor and Human Rights Policy as it sends an important signal to investors and countries with regard to ensuring that workers and communities are not negatively impacted by development projects.

1. INTRODUCTION

Statement of Purpose and Scope

A Statement of Purpose should include why a particular policy has been developed and why it is important for Applicants to uphold labor and human rights standards in their projects. A link between labor and human rights and OPIC’s mission statement and development goals could be made to highlight the interdependence of labor and human rights and economic and social development. Also, the benefits of applying these standards to the Applicant could be mentioned, such as reducing risks of project interruption, increasing quality of management, etc.

Source of Policy

The Source only refers to U.S. law, however, later on, international standards are mentioned. The Source of Policy in OPIC’s Environmental and Social Policy Statement includes a reference to the IFC Performance Standards and Industry Sector Guidelines. It is suggested to include the same statement in the Labor and Human Rights Policy Statement as well as the International Labour Organization Conventions and UN Human Rights Conventions and Declarations.

OPIC Commitment

It is suggested that the word ‘promote’ be removed from the commitments as ‘promote’ could be interpreted by Applicants as a much less stringent standard and is more difficult to measure as there is not clear definition of the degree to which rights and compliance should be ‘promoted’.

2. COUNTRY ELIGIBILITY

The 'Country Eligibility' section defines the process to determine if a country is eligible for OPIC-supported projects based on whether the country is taking steps to afford internationally recognized worker rights. However, this section does not define a process for country eligibility with respect to human rights. Are countries' human rights records taken into consideration and what criteria would a country need to meet to be eligible based on its human rights record?

While the 'Country Eligibility' section defines the countries in which OPIC can support projects, once a country is eligible, OPIC could still consider categorizing or ranking countries according to labor and human rights risks in order to factor in country risk in its determination of project risk discussed in 3.5 and 4.7. Country risk could be determined by, for example, the number of relevant Conventions the country has signed; the degree to which the country's national laws and regulations are consistent with international human rights and labor standards; the level of enforcement of those laws and regulations; and the effectiveness of the country's judicial system to resolve claims brought by victims of human rights abuses or labor exploitation.

3. PROJECT LABOR REQUIREMENTS

Requirements and Standards

Section 231A of the FAA quoted in this section does not include a provision on taking actions to ensure non-discrimination, although it is mentioned in section 3.1. Non-discrimination is a core labor standard as identified in the 1998 ILO Declaration of Fundamental Principles and Rights at Work and it should be included in the language mentioned in 3.0 that goes into all OPIC Agreements.

Section 3.1 describes the contractual requirement for Projects to comply with IFC Performance Standards, internationally recognized worker rights, and all applicable laws in the host country, including labor laws. However, it does not provide guidance on what Applicants should do if the national laws conflict with international standards. For example, in some countries, migrant workers have fewer rights, including less favorable terms of employment, than national workers under the law. It should be made clear that the highest standard should apply in those cases. While this is mentioned in section 3.9 as part of the Gap Analysis, it should be reiterated in section 3.1 and worded in such a way that the Applicant is the subject to ensure it is clearly understood at the outset.

The requirement of the establishment of 'reasonable' working conditions and terms of employment invites a great deal of subjectivity into the definition of 'reasonable'. What is OPIC's test of reasonableness? Does it include a 'living' wage as opposed to a minimum wage, for example?

Screening and Review

As mentioned above, it is recommended that country risk be factored in to the screening and review process, including the high/low risk categorization.

From this point onwards, it is not clear if the document is outlining the steps involved in OPIC's review process sequentially. It would be useful to clarify at what stage of the project review these activities are occurring and how the review moves from one stage of the process to the next.

Section 3.3 limits OPIC's review to risks and impacts identified by the Applicant. This seems to be a very limited source of information that is likely to be somewhat biased. Although 'knowledgeable third parties' are mentioned as a possible source of additional information, a more comprehensive approach would be to expand investigation at the initial stage in order to identify risks and impacts from other sources. In addition, the publication of the project at this stage would facilitate input from 'knowledgeable third parties' who could submit supplementary information about the project's risks and impacts.

Section 3.5 should also include hazardous work and extensive use of subcontractors as high risk factors. Current issues should also be taken into account. For example, a project that involves the use of cotton from Uzbekistan where child labor in cotton farming is extensive and well-documented, should be considered higher risk.

Sections 3.5 and 3.6 discuss risks in terms of high/low, whereas OPIC's Environmental and Social Policy Statement provides for categorization of projects as A, B, or C. It is not clear how the high/low risk criteria are linked to the A, B, C categorization process. For example, would high labor risks affect a project's categorization?

The Gap Analysis and Contractual Conditions

Given that the 'gap analysis' is for the purpose of determining the differences between applicable laws and internationally recognized worker rights standards, it is difficult to understand why this would need to be conducted for each project, unless there were industry-specific laws that could apply. It may be more efficient to conduct the gap analysis for each country (and update them annually) and incorporate any industry-specific laws on a project-by-project basis.

In general, there is a lack of discussion as to how an Applicant should address any labor risks and impacts raised and how OPIC will ensure that any risks or impacts identified are mitigated.

4. HUMAN RIGHTS REQUIREMENTS

Requirements and Standards

Section 4.1 should also reference International Human Rights Law, including the International Bill of Human Rights and other UN Conventions and Declarations. As with the Labor Requirements section, section 4.1 should include a list of the main human rights requirements and refer to those relevant UN Human Rights Conventions and Declarations.

Regarding sections 4.4 – 4.8, the above comments on the corresponding sections of the Labor Requirements section also apply to the Human Rights Requirements.

Given that the Labor Requirements section ends with a description of the Gap Analysis and Contractual Conditions, are we to assume that a similar process is not undertaken for Human Rights Requirements? A similar process should be undertaken for Human Rights as well.

We hope these comments are useful and we would gladly provide any additional information or clarification upon request. Thank you for considering our feedback.

Sincerely,



Soledad Milius
Program Manager, Institutions and Project Finance
Specialized Technology Resources – Responsible Sourcing | US-Hoboken, NJ
sol.milius@STRRS.com